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7 Attorneys for Defendants  
KIA MOTORS AMERICA, INC. and  
8 KIA MOTORS CORPORATION

9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 CONSTANCE SIMS and SAMMY  
13 RODRIGUEZ, individually and on  
14 behalf of all others similarly  
situated,

15 Plaintiffs,

16 v.

17 KIA MOTORS AMERICA, INC.,  
18 and KIA MOTORS  
CORPORATION,

19 Defendants.

Case No. 8:13-cv-01791 AG-DFM

CLASS ACTION

**NOTICE OF MOTION AND  
DEFENDANTS' MOTION TO  
DISMISS AND/OR STRIKE  
ALLEGATIONS IN THIRD  
AMENDED CLASS ACTION  
COMPLAINT**

[Memorandum of Points and Authorities;  
[Proposed] Order filed/lodged  
concurrently herewith]

Hearing Date: June 2, 2014  
Time: 10:00 a.m.  
Courtroom: 10D  
Judge: Hon. Andrew J. Guilford

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on June 2, 2014, at 10:00 a.m., or as soon  
3 thereafter as the matter may be heard, in Courtroom 10D of the above-captioned  
4 Court, located at 411 West Fourth Street, Santa Ana, California 92701, Defendants  
5 Kia Motors America, Inc. and Kia Motors Corporation (collectively, “Defendants”)  
6 will and hereby do move this Court for an order dismissing and/or striking  
7 Plaintiffs’ Third Amended Class Action Complaint (“Complaint”) pursuant to  
8 Federal Rules of Civil Procedure 9(b), 12(b)(6), and 12(f).

9 Specifically, Defendants seek an order:

10 (1) dismissing Plaintiffs’ Unfair Competition Law (“UCL”), False  
11 Advertising Law (“FAL”), Consumer Legal Remedies Act (“CLRA”), and  
12 fraudulent concealment claims for failure to state a claim because these claims are  
13 based on non-actionable statements, because Defendants owed no duty to disclose  
14 the alleged defects, and/or because Plaintiffs have failed to meet the heightened  
15 pleading requirements of Rule 9(b);

16 (2) dismissing Plaintiffs’ breach of implied warranty of merchantability  
17 claim for failure to state a claim;

18 (3) dismissing and/or striking class allegations regarding any vehicles other  
19 than the 2011 and 2013 model year Kia Soul on the basis that Plaintiffs lack  
20 standing to assert claims for products they did not purchase;

21 (4) striking paragraphs 43–51, 53–54, 87, 100, and 111 of the Complaint  
22 setting forth alleged “false and misleading” statements, and any other allegations  
23 concerning alleged “false and misleading” statements because such statements and  
24 allegations are non-actionable; and/or

25 (5) striking paragraph 42 in its entirety, as well as the portions of paragraphs  
26 19, 88(iv), and 101(iv) referring to the Ford Pinto of the Complaint, because such  
27 allegations are irrelevant, superfluous, and unduly prejudicial.

28 This Motion is made following the conference of counsel pursuant to Local

1 Rule 7-3, which took place on April 21, 2014.

2 This Motion is based on this Notice of Motion and Motion, the concurrently  
3 filed Memorandum of Points and Authorities, and all other pleadings, papers, and  
4 evidence on file in this matter, any matters properly subject to judicial notice, and  
5 such other matters or argument as may be provided on or before the hearing hereof.

6 Dated: April 28, 2014

7 RICHARD B. GOETZ  
8 CARLOS M. LAZATIN  
9 P. KEVIN MOKHTARI  
10 O'MELVENY & MYERS LLP

11 By: /s/ Carlos M. Lazatin  
12 CARLOS M. LAZATIN

13 Attorneys for Defendants  
14 KIA MOTORS AMERICA, INC. and  
15 KIA MOTORS CORPORATION  
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